83768-6

38531-7

THE SUPREME COURT
OF THE STATE OF WASHINGTON

JANE ROE,

Petitioner,

v.

TELETECH CUSTOMER CARE MANAGEMENT (COLORADO) LLC,

Respondent.

PETITION FOR REVIEW

Frank Freed Subit & Thomas, LLP
Michael C. Subit, WSBA # 29189
Jillian M. Cutler, WSBA # 39305
705 Second Avenue, Suite 1200
Seattle, Washington 98104
(206) 682-6711

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases - Washington

Cases – Federal

Statutes - Washington

Statutes - Federal

Regulations and Rules

I. IDENTITY OF PETITIONER

Petitioner Jane Roe is a qualifying patient authorized under Washington law to use medical marijuana to treat her incapacitating migraine headaches.

II. COURT OF APPEALS DECISION

Jane Roe v. TeleTech Customer Care Mgt., --- Wn. App. ---, --- P.3d --- (No. 38531-7 Div. II Sep. 15, 2009) (Appendix A hereto).

III. ISSUES FOR REVIEW

1. Whether Initiative 692, the Washington Medical Use of Marijuana Act ("MUMA"), codified at RCW 69.51A, prohibits an employer from discharging or refusing to hire an employee solely because of her physician-authorized, at-home use of medical marijuana in accordance with the Act?

2. Whether Washington public policy prohibits an employer from discharging an employee solely because of her physician-authorized, at home use of medical marijuana in accordance with the MUMA?

IV. STATEMENT OF THE CASE

A. Washington's Medical Use of Marijuana Act.

On November 3, 1998, Washington voters approved Initiative 692 (CP 184-186, attached as Appendix B hereto), the Washington Medical Use of Marijuana Act ("MUMA"), by an "overwhelming vote." *State v.*

Tracy, 158 Wn.2d 683, 692, 147 P.3d 559 (2006) (J. Johnson, Madsen, and Sanders, JJ., dissenting). Timothy Killian was the co-drafter and the campaign manager of the Initiative. Declaration of Timothy Killian (Nov. 12, 2007) ("Killian Dec.") at ¶ 1; Clerk's Papers ("CP") 291.

MUMA contains this preamble:

> The People of Washington state find that some patients with terminal or debilitating illnesses, under their physician's care, may benefit from the medical use of marijuana. . . . The People find that humanitarian compassion necessitates that the decision to authorize the medical use of marijuana by patients with terminal or debilitating illnesses is a personal, individual decision, based upon their physician's professional medical judgment and discretion.

See MUMA section 1, Appendix B hereto at p.1, codified at RCW 69.51A.005 (2006).[1] MUMA also provides: "Any person meeting the requirements appropriate to his or her status under this Chapter shall be considered to have engaged in activities permitted by this chapter and shall not be penalized in any manner, or denied any right or privilege, for such actions." MUMA section 5, Appendix B at 2, codified at RCW 69.51A.040(1). Employment is one of the "privileges" that Initiative 692 was intended to protect qualified patients and primary caregivers from losing. *See* Killian Dec. at ¶ 7, CP 292.

---

[1]The Legislature clarified MUMA in 2007. *See infra* pp.3-4. Except where otherwise indicated, references will be to the version of the Act in effect at the time of Ms. Roe's termination in late 2006.

MUMA balances the rights of qualifying patients to use medical marijuana in accordance with the Act with the legitimate interest of employers, schools, and other entities in prohibiting the on-site use of medical marijuana. *Id.* at ¶ 8. To achieve this balance, MUMA states: "[N]othing in this chapter requires any accommodation of any medical use of marijuana in any place of employment, in any school bus or on any school grounds, or in any youth center." MUMA section 8, Appendix B at 3, codified at RCW 69.51A.060(4). By providing that employers were not required to accommodate the *use* of medical marijuana *in* any *place* of employment, MUMA was intended to require employers to accommodate an employee's medical use of marijuana *outside* of the workplace, as long as that use complies with the Act. Killian Dec. at ¶ 10, CP 293.

In the years following the enactment and codification of Initiative 692, the Legislature came to realize that RCW 69.51A.060(4) could be misread to excuse employers from having to accommodate an employee's off-site use of medical marijuana as well as her on-site use. *Id.* at ¶ 12. On May 8, 2007, the Governor signed Senate Bill 6032, "An Act Relating to the Medical Use of Marijuana." Engrossed Substitute Senate Bill 6032, CP 240 (attached as Appendix C). The stated intent of the Bill was "to clarify the law on medical marijuana so that the lawful use of this substance is not impaired" and to ensure that "qualifying patients may

fully participate in the medical use of marijuana." *Id.* at p. 2. The amendment was also "intended to provide clarification" to "all participants in the judicial system." *Id.*

The 2007 amendments clarified RCW 69.51A.060(4) by adding the following italicized language: "Nothing in this chapter requires any accommodation of any *on-site* use of marijuana in any place of employment, in any school bus, or on any school grounds, or in any youth center, *in any correctional facility, or smoking of marijuana in any public place. . . .*" *Id.* (Appendix C at p.7.) The phrase "on-site" was added to eliminate any possibility that the limitation on the duty to accommodate the medical use of marijuana in RCW 69.51A.060(4) would be misinterpreted to allow restriction of a patient's off-site use of medical marijuana. *See* Killian Dec. at ¶ 13, CP 293.

B. Ms. Roe's Employment with TeleTech.

For many years, Petitioner Jane Roe suffered from debilitating migraine headaches. Declaration of Jane Roe (November 14, 2007) ("Roe Dec.") at ¶ 4, CP 261. Her symptoms included chronic pain, nausea, blurred vision, and sensitivity to light. *Id.* at ¶ 5. To treat the migraines, Ms. Roe and her doctors experimented with numerous traditional medicines for more than a year before she was authorized to use medical marijuana. *Id.* at ¶ 6; CP 314-318.

On June 26, 2006, Dr. Thomas Orvald provided Ms. Roe with "Documentation of Medical Authorization to Possess Marijuana for Medical Purposes in Washington State." Roe Dec. at ¶ 10, CP 261; CP 269. In accordance with RCW 69.51A.010, Dr. Orvald stated that he was a physician licensed in the State of Washington and that he was treating Ms. Roe for a debilitating condition. CP 269. Dr. Orvald stated that he had advised Ms. Roe of the potential risks and benefits of medical marijuana and assessed her medical history and medical condition. *Id.* He concluded that the potential benefits of the medical use of marijuana would likely outweigh the health risks for Ms. Roe. *Id.* Ms. Roe was a Washington resident at the time she received this authorization and the diagnosis of having a debilitating medical condition. Roe Dec. at ¶ 10, CP 262.

After receiving her medical marijuana authorization from Dr. Orvald, Ms. Roe used medical marijuana in full compliance with MUMA. *Id.* at ¶ 11. Medical marijuana was far more effective than any other treatment Ms. Roe had tried for her migraines. *Id.* Her migraine headaches largely disappeared. *Id.* She used marijuana in such small doses that it had no side effects. *Id.* at ¶ 12. It did not negatively affect her ability to work or take care of her children. *Id.* Ms. Roe never used marijuana in front of her children. *Id.* Taking a small amount of medical

marijuana at night, in her own home, enabled Ms. Roe to be employed. *Id.*

On October 3, 2006, Respondent TeleTech Customer Care Management (Colorado), LLC ("TeleTech") hired Ms. Roe as a customer service consultant. *Id.* at ¶ 13; CP 271-72. Customer service consultant is a non-safety sensitive position. *Id.* at ¶ 13; CP 262. The position's duties were to answer incoming calls and e-mails promptly; provide concise quality customer service in a professional and courteous manner; and interact with fellow team members. CP 248. The qualifications Ms. Roe demonstrated to be hired included "manual dexterity and motor coordination ability" and "eye coordination ability." *Id.*

Ms. Roe received a copy of TeleTech's substance abuse policy for applicants on October 3. Roe Dec. at ¶ 14, CP 262; CP 274-77. When Ms. Roe learned that she would have to take a drug test, she informed TeleTech that she used medical marijuana at home and that she had a medical authorization to do so. Roe Dec. at ¶ 15, CP 262. Ms. Roe offered to provide TeleTech with a copy of her medical marijuana authorization, but TeleTech declined her offer. *Id.* Ms. Roe took the drug test on October 5. *Id.* at ¶ 16.

Ms. Roe started work at TeleTech on October 10. *Id.* at ¶ 17. That same day she received a copy of TeleTech's substance abuse policies for

employees. *Id.* at ¶ 18; CP 279-87. Her drug test results also came back on October 10. Not surprisingly, she tested positive. Roe Dec. at ¶ 19, CP 263; CP 288. The positive result was caused by her at-home use of medical marijuana in accordance with her medical authorization. Roe Dec. at ¶ 19, CP 263.

Ms. Roe's drug test had been administered by ChoicePoint Workplace Solutions. CP 288. ChoicePoint accepts medical marijuana as an explanation for a positive drug test when the employee resides in a state where medical marijuana is legal, the employee has documentation from her physician supporting the medical use of marijuana, and the employer has a policy of accepting medical marijuana. CP 251-52. The day of Ms. Roe's positive drug test result, Mary Ann Peltier, a ChoicePoint supervisor, wrote Llibertat Ros in TeleTech's Bremerton Talent Acquisition Department about Ms. Roe's situation. *Id.* Ms. Peltier asked Ms. Ros for a letter describing TeleTech's medical marijuana policy. *Id.* Ms. Peltier also forwarded ChoicePoint's own policy on medical marijuana to Ms. Ros. *Id.*

Despite Ms. Roe's positive drug test, she continued to work at TeleTech for over a week. Roe Dec. at ¶ 20, CP 263. Her use of medical marijuana in no way impaired her ability to do her job. *Id.* On October 18, TeleTech discharged Ms. Roe from employment solely because she

had tested positive for medical marijuana. *Id.* at ¶ 21; CP 290. Ms. Roe has never used marijuana in the workplace, at TeleTech or anywhere else. Roe Dec. at ¶ 22, CP 263.

C. Procedural Background.

Ms. Roe filed this action in Kitsap County Superior Court on February 13, 2007. CP 52-55. She filed an amended complaint on February 26 seeking reinstatement and damages against TeleTech for terminating her in violation of MUMA and Washington public policy. CP 1-4. On March 27 TeleTech removed this case to the United States District Court for the Western District of Washington on the ground that, contrary to the express assertions in Ms. Roe's Complaint, the amount in controversy exceeded $75,000. CP 10-21. On June 6, 2007, the federal district court granted Ms. Roe's motion to remand the case to the Superior Court. CP 151-158.

After exchanging written discovery, the parties submitted cross motions for summary judgment on November 16, 2007. On February 1, 2008, the Court denied Ms. Roe's motion for summary judgment and granted TeleTech's motion. CP 361-62. The Superior Court did not issue a written opinion explaining its reasoning. On February 27, 2008, Ms. Roe filed a Notice of Appeal to this Court. CP 363-67. On November 5, 2008, this Court remanded the case to Division Two of the Court of

Appeals. Division Two issued a published opinion on September 15, 2009, affirming the Superior Court's grant of summary judgment to Ms. Roe on the basis that the sole purpose of the MUMA was to provide an affirmative defense to criminal prosecutions.

V. ARGUMENT IN SUPPORT OF REVIEW

This Court should accept review of the Court of Appeals' decision because three of the four criteria for review set forth in RAP 13.4(b) are satisfied. The Court of Appeals' holding that the exclusive purpose of MUMA was to provide an affirmative defense to criminal prosecutions conflicts with every other Court of Appeals opinion to have addressed the issue. The proper interpretation of MUMA constitutes a significant question of Washington law of substantial public interest. The People and Legislature who voted to enact and clarify MUMA would be flabbergasted if qualified patients could lose their jobs simply for using medical marijuana at home in accordance with the Act. In holding that the sole *raison d'etre* of MUMA is to provide a defense to state criminal prosecutions, Division Two substantially undermined the Act's broad remedial purpose, and frustrated voter and legislative intent.

Initiatives are to be interpreted according to the general rules of statutory construction. *City of Spokane v. Taxpayers of Spokane*, 111 Wn.2d 91, 97, 758 P.2d 480 (1988). Those general rules are: (1) a statute

that is clear on its face is not subject to judicial interpretation; (2) an ambiguity will be deemed to exist if the statute is subject to more than one reasonable interpretation; (3) if a statute is subject to interpretation, it will be construed in a manner that best fulfills the legislative purpose and intent; and (4) in determining the legislative purpose and intent the court may look beyond the language of the act to its legislative history. *In re Marriage of Kovacs,* 121 Wn.2d 795, 804, 854 P.2d 629 (1993). Remedial statutes should be construed liberally to promote their purposes. *State v. Grant*, 89 Wn.2d 678, 685, 575 P.2d 210 (1978).

Judicial interpretation of a legislative enactment by initiative should focus on "the voters' intent and the language of the initiative as the average informed lay voter would read it." *State ex rel. Public Disclosure Comm. v. Davenport*, 156 Wn.2d 543, 554,130 P.3d 352 (2006). Courts may also rely on statements contained in the official voter's pamphlet. *Id.* In determining legislative intent, Washington courts pay particular attention to the statements of prime drafters and sponsors of the enactment at issue. *Kovacs,* 121 Wn.2d at 807-08; *Duke v. Boyd*, 133 Wn.2d 80, 86, 942 P.2d 351 (1997). Courts presume that the drafters and sponsors of legislation understand the meaning of the language they propose. *Duke*, 133 Wn.2d at 87. Because state ballot measures adopted by the People are interpreted in the same manner as bills enacted by the Legislature, *see,*

e.g., *ATU 587 v. State*, 142 Wn.2d 183, 205-06, 11 P.3d 762 (2000), courts should likewise give weight to the statements of drafters and sponsors of an initiative. *See id.* at 223.

MUMA's preamble demonstrates its broad remedial purposes:

> The People find that humanitarian compassion necessitates that the decision to authorize the medical use of marijuana by patients with terminal or debilitating illnesses is a personal, individual decision, based upon their physician's professional medical judgment and discretion.

RCW 69.51A.005. Except for the Court of Appeals in the instant case, Washington courts have uniformly held that MUMA's purpose is to allow patients with terminal or debilitating illnesses to use medical marijuana when authorized by their treating physicians based on their professional medical judgment and discretion. *State v. Hanson*, 138 Wn. App. 322, 329, n.1, 157 P.3d 438 (2007); *State v. Ginn*, 128 Wn. App. 872, 877, 117 P.3d 1155 (2005); *State v. Butler*, 126 Wn. App. 741, 748, 109 P.3d 493 (2005); *State v. Shepherd*, 110 Wn. App. 544, 549, 41 P.3d 1235 (2002). That legislative purpose is far broader than providing an affirmative defense to a criminal prosecution.[2] No one disputes that the People intended MUMA to create an affirmative criminal defense. Indeed, that

[2] *State v. Tracy*, 158 Wn.2d 683, 147 P.3d 559 (2006), is not to the contrary. In that case, this Court ruled that MUMA did not provide Tracy immunity from marijuana manufacturing and possession charges because she had not established she was a "qualifying patient" under the Act. *Id.* at 685. Although the Court rightly recognized that I-692 "created a compassionate use defense against prosecution for marijuana related crimes," *id.*, it did not identify that as the sole purpose of the Act.

may have been Initiative's foremost purpose. But that does not mean it was the voters' exclusive intent.

The Court of Appeals erred when it held that "the average informed voter would understand from reading MUMA's preamble that it was intended to address one subject---criminal prosecutions." Slip Op. at 7. An initiative's ballot title is a critical tool in divining a measure's intent. *ATU 587*, 142 Wn.2d at 212. The ballot title is what the voter's are faced with in the voting booth. *Id.* The Court of Appeals did not even consider MUMA's ballot title in determining the voter's intent. The Initiative's ballot title was "Shall the medical use of marijuana for certain terminal or debilitating conditions be permitted, and physicians authorized to advise patients about medical use of marijuana?"

Initiative 692's ballot title demonstrates that the People intended to the Act to do much more than provide an affirmative defense to a criminal prosecution. Nothing in MUMA's ballot title would have suggested to the average informed voter that the sole purpose of the Initiative was to provide an affirmative defense to criminal prosecutions. Indeed, a voter who intended that "the medical use of marijuana for certain terminal or debilitating conditions be permitted" would not have understood or likely intended that people could lose their jobs for engaging in the very conducted that the Initiative protected.

In interpreting a statute, a court should give effect to every word, clause, and sentence if at all possible. Statutes should be construed so that no part is rendered meaningless. *Klein v. Pyrodyne Corp.*, 117 Wn.2d 1, 13, 817 P.2d 1359 (1991); *State v. Bash*, 130 Wn.2d 594, 602, 925 P.2d 978 (1996); *State v. Seek*, 109 Wn. App. 876, 881-82, 37 P.3d 339 (2002). The Court of Appeals' misinterpretation of MUMA renders superfluous significant portions of the Act. Numerous sections and subsections of MUMA demonstrate that it was intended to be not just a medical marijuana decriminalization law but rather, as its legislative title expressly states, a comprehensive enactment regarding the "Medical Use of Marijuana." Those provisions include the following:

(1) Nothing in this chapter requires any accommodation of any medical use of marijuana in any place of employment, in any school bus or any school grounds, or in any youth center. Section 8 (Appendix B at 3), codified at RCW 69.51A.060).

(2) Nothing in this chapter requires any health insurance provider to be liable for any claim for reimbursement for the medical use of marijuana. *Id.*

(3) Nothing in this chapter requires any physician to authorize the use of medical marijuana for a patient. *Id.*

(4) The state shall not be held liable for any deleterious outcomes from the medical use of marijuana. Section 7 (Appendix B at 3), codified at RCW 69.51A.050.

MUMA expressly protects qualifying patients from being "penalized in any manner, or denied any right or privilege" as a result of using medical marijuana in accordance with the Act. Section 5 (Appendix B at p. 2), codified at RCW 69.51A.040(1). This language is not simply a restatement of the affirmative defense to criminal prosecution set forth in the section's first sentence. The statute prohibits the denial of "*any* right or privilege." If MUMA's sole purpose were to provide immunity from state criminal prosecutions, as the Court of Appeals held, there would have been no reason for the People to have enacted the second sentence of RCW 69.51A.040(1). The first sentence of section 5 would have sufficed.[3] The Court of Appeals erred by holding that the purpose of the second sentence of section 5 was merely to restrict the State from imposing penalties ancillary to criminal prosecution. Slip. Op. at 8. Nothing in section 5 of MUMA restricts the application of the second sentence to the State. The Court of Appeals' self-created limitations are contrary to MUMA's plain text.

---

[3] It is irrelevant that the code reviser added "Qualifying patients' affirmative defense" preceding RCW 69.51A.040 after I-692 was codified. That section heading did not appear in the Initiative that the People voted on. RCW 69.51A.902 expressly states: "Captions used in this chapter are not any part of the law." Section headings that are not adopted by the Legislature are not part of the law and may not be relied on to construe a statute. *See Sollenberger v. Cranwell*, 26 Wn. App. 783, 787, 614 P.2d 234 (1980); *State v. Lundell*, 7 Wn. App. 779, 782 n. 1, 503 P.2d 774 (1972). Furthermore, the title for Section 5 in the Initiative itself was "Protecting Qualifying Patients and Primary Caregivers" not "Qualifying patients' affirmative defense." See Appendix B at p. 2.

Section 4 of Initiative 692 confirms the error of the Court of Appeals' construction. That section provides "Protections to Physicians Authorizing the Use of Medical Marijuana," and like section 5 has two distinct parts: one criminal and one non-criminal. See Appendix B. at pp. 1-2, codified at RCW 69.51A.030. Section 4 provides physicians (1) an exception from the state's criminal laws; and (2) protections from being penalized in any manner or denied any right or any privilege, for engaging in conduct protected by the statute. *Id.* Sections 4 and 5 have the same dual structure. Both sections first set forth an affirmative defense from criminal prosecution and then a separate and distinct protection from being denied "any right or privilege" on account of engaging in the very conduct MUMA protects. As the first sentence of each section immunizes physicians, qualifying patients and primary caregivers from criminal prosecutions, Division Two erred in holding the purpose of MUMA's "rights and privileges" language is to forbid penalties ancillary to criminal prosecutions, which cannot be brought in the first place.

This Court should give MUMA the broad reach that the voters intended. A reasonable voter would have understood that if qualifying patients and primary caregivers could be fired from their jobs based solely on the at-home and off-duty use of medical marijuana, then the rights guaranteed to them by MUMA would be nothing more than an empty

promise. Undefined terms in an initiative should be deemed to have their commonly accepted legal meaning. *ATU 587 v. State*, 142 Wn.2d 183, 219-20, 11 P.3d 762 (2000). The law frequently describes employment as a "right" or a "privilege." Both federal and state civil rights statutes prohibit discrimination with respect to the "privileges" of employment. *See, e.g.,* 42 U.S.C. § 2000e-2(a)(1) (Title VII of the Civil Rights Act of 1964); 29 U.S.C. § 623(a)(1) (Age Discrimination in Employment Act of 1967); 42 U.S.C. § 12112(a) (Americans With Disabilities Act of 1990); RCW 49.44.090(1) (age discrimination); RCW 49.60.040(d)(ii) (disability discrimination); and RCW 49.60172(2) (HIV employment). Other state statutes likewise refer to employment as a "privilege." *See, e.g.,* RCW 47.64.001(9); RCW 48.43.065(2)(a). *See also White v. State*, 131 Wn.2d 1, 10, 929 P.2d 396 (1997) ("public employment was considered a privilege that could be conditioned or denied").

Contrary to what Division Two suggested, Ms. Roe is not asking the courts to create an employment scheme out of whole cloth. Slip Op. at 8-9. Section 8 of MUMA, codified at RCW 69.51A.060(4), expressly uses the term "accommodation." Courts must presume that the People and the Legislature chose this precise term for a reason. The term "accommodation" has a well-established meaning under Washington law dating back decades. An "accommodation" requires an employer to make

adjustments to its standard policies and procedures under certain circumstances based on an individualized assessment of an employee's ability to perform a particular job. *See Riehl v. Foodmaker, Inc.*, 152 Wn.2d 138, 145, 94 P.3d 930 (2004). *Accord Buckingham v. United States,* 998 F.2d 735, 741 (9th Cir. 1993) (noting that requiring employers to alter existing policies or procedures is "the essence of reasonable accommodation"). The voters understood exactly what they were doing when they provided that employers must "accommodate" their employees' off-site use of medical marijuana.

Section 8 of the Initiative, RCW 69.51A.060(4), establishes the extent of, and the limitations on, the obligations of private actors – including physicians, health insurance providers, employers, schools, and youth centers – to accommodate the medical use of marijuana under the Act. It has nothing to do with decriminalization. The voter's pamphlet for Initiative 692 reflects the importance of the provision. The pamphlet instructed voters that the Initiative "[p]rohibits marijuana use *while* driving, or *in* the workplace." CP 258 (emphasis supplied). Any reasonable voter would have understood that MUMA did not give qualified patients the right to use medical marijuana *while* working (or driving), but that the measure protected them from the loss of either the privilege of employment (or driving) because of their use of medical

marijuana at other times and in other places in accordance with the Act. The voter's pamphlet confirms that MUMA imposes a duty of employer accommodation of the use of medical marijuana but that it does not extend to the *use* of medical marijuana *in* the workplace.

Read together and in light of MUMA's broad remedial purposes, RCW 69.51A.040(1) and RCW 69.51A.060(4) provide that an employer may not penalize an employee or deny her the privilege of employment because of her use of medical marijuana in accordance with MUMA, but an employer need not accommodate an employee's use of medical marijuana on-site. The necessary corollary of this limitation is that an employer has a duty to accommodate an employee's off-site use of medical marijuana. The Legislature clearly recognized this when it enacted the 2007 clarifications to MUMA. *Inter alia*, the 2007 enactments removed any doubt that the Act's limitation on the duty of employers to accommodate their employees' medical use of marijuana was solely a limitation on the duty to accommodate the *on-site* use of medical marijuana and not a limitation on the duty to accommodate the *off-site* use.

The Court of Appeals failed to mention the Legislature's 2007 clarifications to MUMA, let alone attempt to reconcile them with the panel's conclusion that "MUMA provides qualifying medical users only a defense to criminal prosecution." Slip. Op. at 10. There is in fact no way

to reconcile the 2007 amendments and the Court of Appeals' opinion. If MUMA were merely a defense to state criminal prosecutions, then Legislature's addition of the words "on site" to RCW 69.51A.060(4) would have been pointless. The Legislature's simultaneous clarification that the duty to accommodate the medical use of marijuana does not extend to its use "in any correctional facility, or smoking of marijuana in any public place" would also have been a useless exercise if the Court of Appeals' construction of the statute were correct. The House Bill Report explained that correctional facilities were being "added to the list of *places where* the *on-site* medical use of marijuana does not *need to be accommodated.*" CP at 210 (emphasis supplied). The Legislature would have no need to add to the list of the specific places where the *on-site* use of medical marijuana need not be accommodated unless MUMA imposed a general duty of accommodation with respect to its offsite use.

The Court of Appeals ignored the well-established maxim that the Legislature does not engage in unnecessary or meaningless acts. *In re Recall of Pearsall-Stipek*, 141 Wn.2d 756, 769, 10 P.3d 1034 (2000); *John H. Sellen Construction Co v. State,* 87 Wn. 2d 878, 883, 558 P.2d 1342 (1976). A court must presume some significant purpose or objective to every legislative (or popular) enactment. *See John H. Sellen Construction Co.*, 87 Wn.2d at 1344. The Legislature's 2007 clarifications leave no

doubt that MUMA constitutes a comprehensive enactment regarding of the medical use of marijuana and not just an affirmative defense to criminal prosecution. While voters might have used more direct language regarding the duty of employers and others to accommodate the off-site use of medical marijuana, the Legislature correctly understood that MUMA imposes such a duty nevertheless. The Court of Appeals' contrary conclusion subverts the intent of both the voters and Legislature.

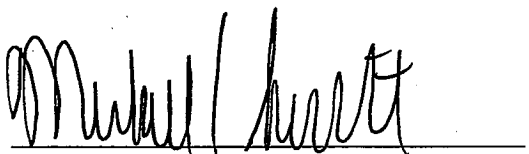
Under the Court of Appeals' decision, an employer may fire an employee solely because of her physician-authorized, off-site use of medical marijuana, without *any* showing that her treatment interferes with her job performance or the employer's legitimate business interests. The Court of Appeals' opinion would force Washington citizens with debilitating illnesses to make a Hobson's choice between their medical treatment and their livelihoods. The appellate court's decision thus jeopardizes the health and economic security of Washingtonians. The People and the Legislature did not intend MUMA to allow such a harsh result so contrary to "common sense." *Cf.* Slip. Op at 9.

VI. CONCLUSION

This Court should accept direct review of this matter in accordance with RAP 13.4(b), reverse the decision of the Court of Appeals, and order the Superior Court to grant Ms. Roe's summary judgment motion.

Respectfully submitted this 15th day of October 2009.

FRANK FREED SUBIT & THOMAS LLP

By: 

Michael C. Subit, WSBA # 29189
Jillian M. Cutler, WSBA #39305
Attorneys for Petitioner Jane Roe
R:\N-R\Roe\Appeal\Petitionforreview.doc

APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

JANE ROE, Appellant, v. TELETECH CUSTOMER CARE MANAGEMENT (COLORADO), LLC, Respondent.	No. 38531-7-II PUBLISHED OPINION

Quinn-Brintnall, J. — After TeleTech Customer Care Management, LLC (TeleTech) rescinded the conditional offer of employment it had made to Jane Roe[1] because she failed a pre-employment drug screening test, Roe sued Teletech alleging wrongful termination. The trial court denied Roe's motion for summary judgment and awarded summary judgment to TeleTech. On appeal, Roe argues, as she did below, that the Washington State Medical Use of Marijuana Act (MUMA), ch. 69.51A RCW, implies a civil cause of action to sue an employer who violates MUMA's provisions. Alternatively, Roe contends that MUMA expresses a public policy favoring medical marijuana use and that TeleTech wrongfully terminated her employment when it violated

[1] The appellant uses the pseudonym "Jane Roe" because the medical use of marijuana remains illegal under federal law.

this policy. Because MUMA provides only a defense to criminal prosecution for the medical use of marijuana in compliance with its provisions, the trial court did not err when it granted TeleTech's summary judgment motion and we affirm.

FACTS

Background Facts

Roe sought authorization under MUMA to use medical marijuana to treat her migraine headaches.[2] Roe became a patient of Thomas Orvald, M.D.[3] at The Hemp and Cannabis Foundation (THCF) Medical Clinic in Bellevue, Washington. On June 26, 2006, Roe filled out a "Pain Inventory Questionnaire" at the THCF clinic and Orvald provided Roe with "Documentation of Medical Authorization to Possess Marijuana for Medical Purposes" that same day. Clerk's Papers (CP) at 261.

TeleTech describes itself as an "outsourcing company that provides a full range of front-to back-office outsourced solutions." CP at 216. TeleTech contracts with Sprint Nextel to provide telemarketing and telesales services out of its customer service center in Bremerton, Washington. TeleTech has an applicant drug policy that states in part:

> TeleTech has a vital interest in ensuring a safe, healthy, and efficient working environment, and in preventing accidents and injuries resulting from the misuse of alcohol or drugs. The unlawful or improper presence or use of drugs or alcohol in the workplace presents a danger to everyone.
>
> . . . .
>
> All applicants . . . to whom TeleTech has given a conditional offer of employment, are required to submit to a pre-employment drug test and must receive a negative result as a condition of employment.
>
> . . . .
>
> Any applicant who receives a confirmed positive drug test result will be ineligible

[2] Roe contends that traditional prescription and over-the-counter medications failed to give her relief.

[3] Dr. Orvald is licensed to practice medicine in Washington.

for employment with the company.

CP at 221-22. Sprint Nextel requires TeleTech to perform applicant drug screenings before assigning any individual to work at the Bremerton facility.

On October 3, 2006, TeleTech hired Roe to work as a customer service consultant in its Bremerton facility. On that date, TeleTech provided Roe with a copy of its substance abuse policy for job applicants. After learning that she would be required to submit to drug testing, Roe told TeleTech that she uses medical marijuana at home and that she had medical authorization to do so. Roe offered to provide TeleTech with her medical marijuana authorization, but TeleTech declined.

On October 5, 2006, Roe took a drug test administered by ChoicePoint Workplace Solutions. On October 10, 2006, Roe began working for TeleTech and TeleTech provided Roe a copy of its substance abuse policy for employees. Roe's drug test results also came back on October 10, 2006. When Roe tested positive for marijuana, Mary Ann Peltier, a ChoicePoint supervisor, wrote Llibertat Ros, a TeleTech talent acquisition specialist, to inquire about TeleTech's medical marijuana policy.

Ros contacted supervisors at corporate headquarters who informed Ros that TeleTech does not make an exception to its drug policies for medical marijuana use. On October 18, 2006, TeleTech terminated Roe's employment because of her positive drug screening.

Procedural Facts

On February 13, 2007, Roe filed this action in the Kitsap County Superior Court. Roe filed an amended complaint on February 26, 2007, seeking reinstatement and damages against TeleTech for wrongful termination in violation of public policy and in violation of MUMA. On

March 27, 2007, TeleTech removed the case to the United States District Court for the Western District of Washington, claiming the amount in controversy exceeded $75,000. On June 6, 2007, the federal district court granted Roe's motion to remand the case to the Kitsap County Superior Court.

On November 16, 2007, the parties submitted cross-motions for summary judgment. The trial court heard oral arguments on December 14, 2007, and, on February 1, 2008, it granted TeleTech's motion for summary judgment.

On February 27, 2008, Roe filed a notice of appeal to our Supreme Court. Our Supreme Court transferred Roe's appeal to this court on November 5, 2008.

The issue we must decide in this appeal is whether Washington voters intended MUMA to create employment protections by requiring employers to hire and retain employees who use medical marijuana outside of the workplace and, thus, intended MUMA to prohibit TeleTech from enforcing its drug-free work policy.

ANALYSIS

Roe asserts that MUMA creates an implied cause of action against employers who terminate, or fail to hire, a person based solely on her use of medical marijuana in accordance with MUMA. Roe alternatively argues that TeleTech terminated her employment in violation of the public policy favoring the medical use of marijuana expressed in MUMA. Because MUMA neither implies a private right of action nor expresses a public policy to establish a cause of action for wrongful termination of employment, we affirm the superior court's grant of summary judgment in favor of TeleTech.

Standard of Review

We review a grant of summary judgment de novo, engaging in the same inquiry as the trial court. *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 206, 11 P.3d 762, 27 P.3d 608 (2000). Summary judgment is proper where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c); *Amalgamated Transit*, 142 Wn.2d at 206.

Medical Use of Marijuana Act

In November 1998, the citizens of Washington enacted Initiative Measure No. 692, MUMA. MUMA is codified in chapter 69.51A RCW. Former RCW 69.51A.005 (1999), at issue here, states the purpose and intent of MUMA:

> The people of Washington state find that some patients with terminal or debilitating illnesses, under their physician's care, may benefit from the medical use of marijuana. Some of the illnesses for which marijuana appears to be beneficial include chemotherapy-related nausea and vomiting in cancer patients; [acquired immune deficiency syndrome] wasting syndrome; severe muscle spasms associated with multiple sclerosis and other spasticity disorders; epilepsy; acute or chronic glaucoma; and some forms of intractable pain.
>
> The people find that humanitarian compassion necessitates that the decision to authorize the medical use of marijuana by patients with terminal or debilitating illnesses is a personal, individual decision, based upon their physician's professional medical judgment and discretion.
>
> Therefore, The people of the state of Washington intend that:
>
> Qualifying patients with terminal or debilitating illnesses who, in the judgment of their physicians, would benefit from the medical use of marijuana, shall not be found guilty of a crime under state law for their possession and limited use of marijuana;
>
> Persons who act as primary caregivers to such patients shall also not be found guilty of a crime under state law for assisting with the medical use of marijuana; and
>
> Physicians also be excepted from liability and prosecution for the authorization of marijuana use to qualifying patients for whom, in the physician's professional judgment, medical marijuana may prove beneficial.

Implied Private Right of Action Under MUMA

Roe first argues that the trial court erred when it granted summary judgment in favor of TeleTech because MUMA created a private right of action for a qualifying patient to sue an employer for wrongful termination when based solely on the employee's at-home medical marijuana use in accordance with MUMA. Roe concedes that MUMA does not explicitly create a cause of action but argues that MUMA implies a private cause of action. TeleTech counters that MUMA created an affirmative defense to state criminal prosecution for possessing or manufacturing marijuana only. We agree with TeleTech.

"'It has long been recognized that a legislative enactment may be the foundation of a right of action.'" *Bennett v. Hardy*, 113 Wn.2d 912, 919, 784 P.2d 1258 (1990) (quoting *McNeal v. Allen*, 95 Wn.2d 265, 274, 621 P.2d 1285 (1980) (Brachtenbach, J., dissenting)). We assume that the legislature is aware of the doctrine of implied causes of action and that it would not enact a remedial statute granting rights to an identifiable class without enabling members of that class to enforce those rights. *Bennett*, 113 Wn.2d at 919-20.

> When a legislative provision protects a class of persons by proscribing or requiring certain conduct but does not provide a civil remedy for the violation, the court may, if it determines that the remedy is appropriate in furtherance of the purpose of the legislation and needed to assure the effectiveness of the provision, accord to an injured member of the class a right of action, using a suitable existing tort action or a new cause of action analogous to an existing tort action.

Bennett, 113 Wn.2d at 920 (quoting Restatement (2d) of Torts § 874A (1979)).

Borrowing from the test used by federal courts, our Supreme Court has fashioned a three-part analysis to determine if a statute implies a private right of action. In order for Roe to prevail on her claim that MUMA created a private right of action, we must find that (1) Roe is within the class for whose "especial" benefit MUMA was enacted; (2) the voters intended, explicitly or

implicitly, to create a remedy; and (3) implying a remedy is consistent with the underlying purpose of MUMA. *Bennett*, 113 Wn.2d at 920-21. We hold that by enacting MUMA, the voters did not intend, explicitly or implicitly, to create a civil cause of action and MUMA does not imply a private right of action.

We interpret voter initiatives according to the general rules of statutory construction. *City of Spokane v. Taxpayers of City of Spokane*, 111 Wn.2d 91, 97, 758 P.2d 480 (1988). Statutory language must be given its usual and ordinary meaning, regardless of the policy behind the enactment. *Dep't of Revenue v. Hoppe*, 82 Wn.2d 549, 552, 512 P.2d 1094 (1973). When interpreting an initiative, we focus on "'the voters' intent and the language of the initiative as the average informed lay voter would read it.'" *City of Spokane*, 111 Wn.2d at 97 (internal quotation marks omitted) (quoting *Estate of Turner v. Dep't of Revenue*, 106 Wn.2d 649, 654, 724 P.2d 1013 (1986)). The intent behind the language of an initiative only becomes relevant if the language is ambiguous. *City of Spokane*, 111 Wn.2d at 98. An ambiguity exists when the language of the enactment is susceptible to more than one reasonable interpretation. *State v. Thorne*, 129 Wn.2d 736, 763 n.6, 921 P.2d 514 (1996). Where there is an ambiguity in a voter initiative, we look to extrinsic aids, such as statements in the voters' pamphlet, to determine the voters' intent. *Amalgamated Transit*, 142 Wn.2d at 205-06.

Roe points to three provisions to support her argument that voters intended to create a civil remedy under MUMA for medical marijuana users. She first argues that MUMA's preamble, codified at former RCW 69.51A.005, demonstrates that Washington voters "intended the law to do much more than just protect qualifying patients from criminal prosecution." Br. of Appellant at 14. MUMA's preamble expresses the broad purpose of allowing physicians to "authorize the

medical use of marijuana by patients with terminal or debilitating illnesses." Former RCW 69.51A.005. But the preamble also explicitly expresses MUMA's intent that "[q]ualifying patients . . . shall not be found guilty of a crime under state law for their possession and limited use of marijuana" and that physicians "be excepted from liability and prosecution for the authorization of marijuana use to qualifying patients." The average informed lay voter would understand from reading MUMA's preamble that it was intended to address one subject—criminal prosecutions, from a physician's decision to recommend, and a patient's decision to use, marijuana as treatment for a terminal or debilitating illness. Although employer drug policies may also present an obstacle to a qualified patient's decision to use medical marijuana, the plain language of MUMA's preamble does not demonstrate any intent to address employers' hiring practices nor does it preclude the operation of drug-free businesses.

Next, Roe argues that RCW 69.51A.040(1) implies a civil remedy because it explicitly prohibits the denial of "any right or privilege" to qualified patients using medical marijuana in accordance with MUMA. But Roe reads only the second sentence and takes it out of context. In its entirety former RCW 69.51A.040(1) states:

> If charged with a violation of state law relating to marijuana, any qualifying patient who is engaged in the medical use of marijuana, or any designated primary caregiver who assists a qualifying patient in the medical use of marijuana, will be deemed to have established an affirmative defense to such charges by proof of his or her compliance with the requirements provided in this chapter. *Any person meeting the requirements appropriate to his or her status under this chapter shall be considered to have engaged in activities permitted by this chapter and shall not be penalized in any manner, or denied any right or privilege, for such actions.*

(Emphasis added.)

An average lay voter reading this provision in context would not understand it to prohibit

private employers from maintaining a drug-free workplace and terminating employees who use medical marijuana. The prohibition against "penaliz[ing] in any manner, or den[ying] any right or privilege" follows that provision's earlier limiting reference to those charged with violating a state criminal law relating to marijuana—that is, those charged and subject to criminal prosecution. Former RCW 69.51A.040(1). The average voter would interpret this language as restricting the State from imposing penalties ancillary to criminal prosecution.

Last, Roe argues that former RCW 69.51A.060(4) (1999)'s statement that "[n]othing in this chapter requires any accommodation of any medical use of marijuana in any place of employment," implies that employers must accommodate an employee's *offsite* use of medical marijuana. But when interpreting the language of a voter initiative, we do not read into the initiative "'technical and debatable legal distinction[s]'" that are not apparent to the average informed lay voter. *City of Spokane*, 111 Wn.2d at 97-98 (quoting *In re Estate of Hitchman*, 100 Wn.2d 464, 469, 670 P.2d 655 (1983)). Here, the average informed lay voter would not read this provision as creating a corollary duty for employers to accommodate an employee's medical use of marijuana *outside* the workplace where MUMA expressly creates no such duty *inside* the workplace. To the contrary, absent the strained construction Roe urges, the provision implies that MUMA will place no requirements on employers or places of employment. Moreover, it is unlikely that voters intended to create such a sweeping change to current employment practices, as Roe suggests, through a negative implication, when prior statutes imposing duties on private employers have done so only with explicit language. *See* RCW 49.17.160 ("[n]o person shall discharge or in any manner discriminate against" employee for filing a complaint under Washington Industrial Safety and Health Act of 1973, ch. 49.17 RCW); RCW 49.44.090 (it is

"unfair practice" for employer to "refuse to hire or employ . . . or to terminate from employment" individual because she is 40 years of age or older); former RCW 49.60.180 (2006) (it is "unfair practice" for any employer to "refuse to hire," "discharge or bar . . . from employment," or "discriminate against . . . in compensation or in other terms or conditions of employment" individuals based on characteristics identified in chapter 49.60 RCW).

Thus, it is clear from a common sense reading of MUMA's plain language that the voters did not intend to impose any duty on private employers to accommodate employee use of medical marijuana. When construing a statute, we must read it in its entirety, not piecemeal, and interpret the various provisions of the statute in light of one another. *Thorne*, 129 Wn.2d at 763. Because MUMA's language is unambiguous and does not support the creation of an implied cause of action, we need not look to extrinsic evidence of the voters' intent. *City of Spokane*, 111 Wn.2d at 98.

Public Policy

Next, Roe argues that TeleTech terminated her employment in violation of Washington public policy as expressed in MUMA.

Under the common law, employers may generally terminate an at-will employee for any reason or for no reason at all. *Gardner v. Loomis Armored Inc.*, 128 Wn.2d 931, 935, 913 P.2d 377 (1996). A narrow exception to the employment at-will doctrine prohibits an employer from discharging an employee for a reason that violates public policy. *Sedlacek v. Hillis*, 145 Wn.2d 379, 385, 36 P.3d 1014 (2001). Roe must meet four elements to state a claim for wrongful termination in violation of public policy. Roe must prove that (1) the existence of a clear public policy (the clarity element); (2) discouraging the conduct in which she engaged would jeopardize

the public policy (the jeopardy element); (3) the public policy linked conduct caused her dismissal (the causation element); and (4) TeleTech cannot offer an overriding justification for her dismissal (the absence of justification element). *See Wahl v. Dash Point Family Dental Clinic, Inc.*, 144 Wn. App. 34, 41-42, 181 P.3d 864 (2008).

Largely repeating her earlier interpretation of MUMA, Roe points only to the act itself as expressing a public policy against terminating an employee for the employee's at-home medical use of marijuana. But as we held above, MUMA's policy is to protect qualified patients and their physicians from state criminal prosecution. Thus, Roe cannot establish the clarity element necessary to support her wrongful termination in violation of public policy claim and it fails.

MUMA provides qualifying medical users only a defense to criminal prosecution. MUMA neither grants employment rights for qualifying users nor creates civil remedies for alleged violations of the act. The trial court's decision to award summary judgment in TeleTech's favor was proper and we affirm.

QUINN-BRINTNALL, J.

We concur:

HOUGHTON, P.J.

HUNT, J.

APPENDIX B

COMPLETE TEXT OF Initiative Measure 688

AN ACT Relating to the state minimum wage; and amending RCW 49.46.020.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

Sec. 1. RCW 49.46.020 and 1993 c 309 s 1 are each amended to read as follows:

(1) Until January 1, 1999, every employer shall pay to each of his or her employees who has reached the age of eighteen years wages at a rate of not less than four dollars and ninety cents per hour.

(2) Beginning January 1, 1999, and until January 1, 2000, every employer shall pay to each of his or her employees who has reached the age of eighteen years wages at a rate of not less than five dollars and seventy cents per hour.

(3) Beginning January 1, 2000, and until January 1, 2001, every employer shall pay to each of his or her employees who has reached the age of eighteen years wages at a rate of not less than six dollars and fifty cents per hour.

(4)(a) Beginning on January 1, 2001, and each following January 1st as set forth under (b) of this subsection, every employer shall pay to each of his or her employees who has reached the age of eighteen years wages at a rate of not less than the amount established under (b) of this subsection.

(b) On September 30, 2000, and on each following September 30th, the department of labor and industries shall calculate an adjusted minimum wage rate to maintain employee purchasing power by increasing the current year's minimum wage rate by the rate of inflation. The adjusted minimum wage rate shall be calculated to the nearest cent using the consumer price index for urban wage earners and clerical workers, CPI-W, or a successor index, for the twelve months prior to each September 1st as calculated by the United States department of labor. Each adjusted minimum wage rate calculated under this subsection (4)(b) takes effect on the following January 1st.

(5) The director shall by regulation establish the minimum wage for employees under the age of eighteen years.

PLEASE NOTE

In the preceding and following measures all words in double parentheses with a line through them are in State law and will be taken out if the measure is adopted. Underlined words do not appear in State law but will be put in if the measure is adopted.

To obtain a copy of the text of the proposed measures in larger print, call the Secretary of State's toll-free hotline 1-800-448-4881.

COMPLETE TEXT OF Initiative Measure 692

AN ACT Relating to the medical use of marijuana; adding a new chapter to Title 69 RCW; and prescribing penalties.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec. 1.** TITLE.

This chapter may be known and cited as the Washington state medical use of marijuana act.

NEW SECTION. **Sec. 2.** PURPOSE AND INTENT.

The People of Washington state find that some patients with terminal or debilitating illnesses, under their physician's care, may benefit from the medical use of marijuana. Some of the illnesses for which marijuana appears to be beneficial include chemotherapy-related nausea and vomiting in cancer patients; AIDS wasting syndrome; severe muscle spasms associated with multiple sclerosis and other spasticity disorders; epilepsy; acute or chronic glaucoma; and some forms of intractable pain.

The People find that humanitarian compassion necessitates that the decision to authorize the medical use of marijuana by patients with terminal or debilitating illnesses is a personal, individual decision, based upon their physician's professional medical judgment and discretion.

Therefore, The people of the state of Washington intend that:

Qualifying patients with terminal or debilitating illnesses who, in the judgment of their physicians, would benefit from the medical use of marijuana, shall not be found guilty of a crime under state law for their possession and limited use of marijuana;

Persons who act as primary caregivers to such patients shall also not be found guilty of a crime under state law for assisting with the medical use of marijuana; and

Physicians also be excepted from liability and prosecution for the authorization of marijuana use to qualifying patients for whom, in the physician's professional judgment, medical marijuana may prove beneficial.

NEW SECTION. **Sec. 3.** NON-MEDICAL PURPOSES PROHIBITED.

Nothing in this chapter shall be construed to supersede Washington state law prohibiting the acquisition, possession, manufacture, sale, or use of marijuana for non-medical purposes.

NEW SECTION. **Sec. 4.** PROTECTING PHYSICIANS AUTHORIZING THE USE OF MEDICAL MARIJUANA.

The above text is an exact reproduction as submitted by the Sponsor. The Office of the Secretary of State has no editorial authority.

COMPLETE TEXT OF Initiative Measure 692 (continued)

A physician licensed under chapter 18.71 RCW or chapter 18.57 RCW shall be excepted from the state's criminal laws and shall not be penalized in any manner, or denied any right or privilege, for:

1. Advising a qualifying patient about the risks and benefits of medical use of marijuana or that the qualifying patient may benefit from the medical use of marijuana where such use is within a professional standard of care or in the individual physician's medical judgment; or

2. Providing a qualifying patient with valid documentation, based upon the physician's assessment of the qualifying patient's medical history and current medical condition, that the potential benefits of the medical use of marijuana would likely outweigh the health risks for the particular qualifying patient.

NEW SECTION. Sec. 5. PROTECTING QUALIFYING PATIENTS AND PRIMARY CAREGIVERS.

1. If charged with a violation of state law relating to marijuana, any qualifying patient who is engaged in the medical use of marijuana, or any designated primary caregiver who assists a qualifying patient in the medical use of marijuana, will be deemed to have established an affirmative defense to such charges by proof of his or her compliance with the requirements provided in this chapter. Any person meeting the requirements appropriate to his or her status under this chapter shall be considered to have engaged in activities permitted by this chapter and shall not be penalized in any manner, or denied any right or privilege, for such actions.

2. The qualifying patient, if eighteen years of age or older, shall:

(a) Meet all criteria for status as a qualifying patient;

(b) Possess no more marijuana than is necessary for the patient's personal, medical use, not exceeding the amount necessary for a sixty day supply; and

(c) Present his or her valid documentation to any law enforcement official who questions the patient regarding his or her medical use of marijuana.

3. The qualifying patient, if under eighteen years of age, shall comply with subsection (2) (a) and (c) of this section. However, any possession under subsection (2) (b) of this act, as well as any production, acquisition, and decision as to dosage and frequency of use, shall be the responsibility of the parent or legal guardian of the qualifying patient.

4. The designated primary caregiver shall:

(a) Meet all criteria for status as a primary caregiver to a qualifying patient;

(b) Possess, in combination with and as an agent for the qualifying patient, no more marijuana than is necessary for the patient's personal, medical use, not exceeding the amount necessary for a sixty day supply;

(c) Present a copy of the qualifying patient's valid documentation required by this chapter, as well as evidence of designation to act as primary caregiver by the patient, to any law enforcement official requesting such information;

(d) Be prohibited from consuming marijuana obtained for the personal, medical use of the patient for whom the individual is acting as primary caregiver; and

(e) Be the primary caregiver to only one patient at any one time.

NEW SECTION. Sec. 6. DEFINITIONS.

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

1. "Medical use of marijuana" means the production, possession, or administration of marijuana, as defined in RCW 69.50.101(q), for the exclusive benefit of a qualifying patient in the treatment of his or her terminal or debilitating illness.

2. "Primary caregiver" means a person who:

(a) Is eighteen years of age or older;

(b) Is responsible for the housing, health, or care of the patient;

(c) Has been designated in writing by a patient to perform the duties of primary caregiver under this chapter.

3. "Qualifying Patient" means a person who:

(a) Is a patient of a physician licensed under chapter 18.71 or 18.57 RCW;

(b) Has been diagnosed by that physician as having a terminal or debilitating medical condition;

(c) Is a resident of the state of Washington at the time of such diagnosis;

(d) Has been advised by that physician about the risks and benefits of the medical use of marijuana; and

(e) Has been advised by that physician that they may benefit from the medical use of marijuana.

4. "Terminal or Debilitating Medical Condition" means:

(a) Cancer, human immunodeficiency virus (HIV), multiple sclerosis, epilepsy or other seizure disorder, or spasticity disorders; or

(b) Intractable pain, limited for the purpose of this chapter to mean pain unrelieved by standard medical treatments and medications; or

(c) Glaucoma, either acute or chronic, limited for the purpose of this chapter to mean increased intraocular pressure unrelieved by standard treatments and medications; or

(d) Any other medical condition duly approved by the Washington state medical quality assurance board as directed in this chapter.

5. "Valid Documentation" means:

(a) A statement signed by a qualifying patient's physician, or a copy of the qualifying patient's pertinent

COMPLETE TEXT OF Initiative Measure 692 (continued)

medical records, which states that, in the physician's professional opinion, the potential benefits of the medical use of marijuana would likely outweigh the health risks for a particular qualifying patient; and

(b) Proof of identity such as a Washington state driver's license or identicard, as defined in RCW 46.20.035.

NEW SECTION. **Sec. 7.** ADDITIONAL PROTECTIONS.

1. The lawful possession or manufacture of medical marijuana as authorized by this chapter shall not result in the forfeiture or seizure of any property.

2. No person shall be prosecuted for constructive possession, conspiracy, or any other criminal offense solely for being in the presence or vicinity of medical marijuana or its use as authorized by this chapter.

3. The state shall not be held liable for any deleterious outcomes from the medical use of marijuana by any qualifying patient.

NEW SECTION. **Sec. 8.** RESTRICTIONS, AND LIMITATIONS REGARDING THE MEDICAL USE OF MARIJUANA.

1. It shall be a misdemeanor to use or display medical marijuana in a manner or place which is open to the view of the general public.

2. Nothing in this chapter requires any health insurance provider to be liable for any claim for reimbursement for the medical use of marijuana.

3. Nothing in this chapter requires any physician to authorize the use of medical marijuana for a patient.

4. Nothing in this chapter requires any accommodation of any medical use of marijuana in any place of employment, in any school bus or on any school grounds, or in any youth center.

5. It is a class C felony to fraudulently produce any record purporting to be, or tamper with the content of any record for the purpose of having it accepted as, valid documentation under section 6 (5) (a) of this act.

6. No person shall be entitled to claim the affirmative defense provided in Section 5 of this act for engaging in the medical use of marijuana in a way that endangers the health or well-being of any person through the use of a motorized vehicle on a street, road, or highway.

NEW SECTION. **Sec. 9.** ADDITION OF MEDICAL CONDITIONS.

The Washington state medical quality assurance board, or other appropriate agency as designated by the governor, shall accept for consideration petitions submitted by physicians or patients to add terminal or debilitating conditions to those included in this chapter. In considering such petitions, the Washington state medical quality assurance board shall include public notice of, and an opportunity to comment in a public hearing upon, such petitions. The Washington state medical quality assurance board shall, after hearing, approve or deny such petitions within one hundred eighty days of submission. The approval or denial of such a petition shall be considered a final agency action, subject to judicial review.

NEW SECTION. **Sec. 10.** SEVERABILITY.

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 11.** CAPTIONS NOT LAW.

Captions used in this chapter are not any part of the law.

NEW SECTION. **Sec. 12.**

Sections 1 through 11 of this act constitute a new chapter in Title 69 RCW.

COMPLETE TEXT OF Initiative Measure 694

AN ACT Relating to limiting partial-birth infanticide; adding a new chapter to Title 9A RCW; and prescribing penalties.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec. 1.** The sovereign people hereby find that, in accordance with current scientific evidence, medical terminology and practice, and decisions of the United States supreme court in Roe v. Wade and other cases:

(1) Pregnancy begins with conception and ends when the process of birth begins.

(2) The process of birth begins when a living child begins to exit the uterus or womb by any means and ends when the child is fully delivered or expelled from the vagina or birth canal by any means.

(3) Birth is an irreversible process that, once begun, will inevitably result in the complete delivery or expulsion of an infant child.

(4) Even a living fetus that is prematurely and artificially extracted from the uterus or womb into the vagina or birth canal will be born alive if not killed during the process of birth.

(5) Scientifically, medically, and legally, a child in the process of birth is no longer a fetus, but an infant.

APPENDIX C

CERTIFICATION OF ENROLLMENT

ENGROSSED SUBSTITUTE SENATE BILL 6032

Chapter 371, Laws of 2007

60th Legislature
2007 Regular Session

MARIJUANA--MEDICAL USE

EFFECTIVE DATE: 07/22/07

Passed by the Senate April 20, 2007
YEAS 37 NAYS 9

BRAD OWEN

President of the Senate

Passed by the House April 18, 2007
YEAS 68 NAYS 27

FRANK CHOPP

Speaker of the House of Representatives

Approved May 8, 2007, 4:06 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is ENGROSSED SUBSTITUTE SENATE BILL 6032 as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

Secretary

FILED

May 10, 2007

Secretary of State
State of Washington

ENGROSSED SUBSTITUTE SENATE BILL 6032

AS RECOMMENDED BY THE CONFERENCE COMMITTEE

Passed Legislature - 2007 Regular Session

State of Washington 60th Legislature 2007 Regular Session

By Senate Committee on Health & Long-Term Care (originally sponsored by Senators Kohl-Welles, McCaslin, Kline, Regala and Keiser)

READ FIRST TIME 02/28/07.

AN ACT Relating to medical use of marijuana; amending RCW 69.51A.005, 69.51A.010, 69.51A.030, 69.51A.040, 69.51A.060, and 69.51A.070; adding a new section to chapter 69.51A RCW; and creating a new section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. Sec. 1. The legislature intends to clarify the law on medical marijuana so that the lawful use of this substance is not impaired and medical practitioners are able to exercise their best professional judgment in the delivery of medical treatment, qualifying patients may fully participate in the medical use of marijuana, and designated providers may assist patients in the manner provided by this act without fear of state criminal prosecution. This act is also intended to provide clarification to law enforcement and to all participants in the judicial system.

Sec. 2. RCW 69.51A.005 and 1999 c 2 s 2 are each amended to read as follows:

The people of Washington state find that some patients with terminal or debilitating illnesses, under their physician's care, may

benefit from the medical use of marijuana. Some of the illnesses for which marijuana appears to be beneficial include chemotherapy-related nausea and vomiting in cancer patients; AIDS wasting syndrome; severe muscle spasms associated with multiple sclerosis and other spasticity disorders; epilepsy; acute or chronic glaucoma; and some forms of intractable pain.

The people find that humanitarian compassion necessitates that the decision to authorize the medical use of marijuana by patients with terminal or debilitating illnesses is a personal, individual decision, based upon their physician's professional medical judgment and discretion.

Therefore, the people of the state of Washington intend that:

Qualifying patients with terminal or debilitating illnesses who, in the judgment of their physicians, ((~~would~~)) may benefit from the medical use of marijuana, shall not be found guilty of a crime under state law for their possession and limited use of marijuana;

Persons who act as ((~~primary caregivers~~)) designated providers to such patients shall also not be found guilty of a crime under state law for assisting with the medical use of marijuana; and

Physicians also be excepted from liability and prosecution for the authorization of marijuana use to qualifying patients for whom, in the physician's professional judgment, medical marijuana may prove beneficial.

Sec. 3. RCW 69.51A.010 and 1999 c 2 s 6 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Designated provider" means a person who:

(a) Is eighteen years of age or older;

(b) Has been designated in writing by a patient to serve as a designated provider under this chapter;

(c) Is prohibited from consuming marijuana obtained for the personal, medical use of the patient for whom the individual is acting as designated provider; and

(d) Is the designated provider to only one patient at any one time.

(2) "Medical use of marijuana" means the production, possession, or

administration of marijuana, as defined in RCW 69.50.101(q), for the exclusive benefit of a qualifying patient in the treatment of his or her terminal or debilitating illness.

((~~(2) "Primary caregiver" means a person who:~~

~~(a) Is eighteen years of age or older;~~

~~(b) Is responsible for the housing, health, or care of the patient;~~

~~(c) Has been designated in writing by a patient to perform the duties of primary caregiver under this chapter.~~))

(3) "Qualifying patient" means a person who:

(a) Is a patient of a physician licensed under chapter 18.71 or 18.57 RCW;

(b) Has been diagnosed by that physician as having a terminal or debilitating medical condition;

(c) Is a resident of the state of Washington at the time of such diagnosis;

(d) Has been advised by that physician about the risks and benefits of the medical use of marijuana; and

(e) Has been advised by that physician that they may benefit from the medical use of marijuana.

(4) "Terminal or debilitating medical condition" means:

(a) Cancer, human immunodeficiency virus (HIV), multiple sclerosis, epilepsy or other seizure disorder, or spasticity disorders; or

(b) Intractable pain, limited for the purpose of this chapter to mean pain unrelieved by standard medical treatments and medications; or

(c) Glaucoma, either acute or chronic, limited for the purpose of this chapter to mean increased intraocular pressure unrelieved by standard treatments and medications; or

(d) Crohn's disease with debilitating symptoms unrelieved by standard treatments or medications; or

(e) Hepatitis C with debilitating nausea or intractable pain unrelieved by standard treatments or medications; or

(f) Diseases, including anorexia, which result in nausea, vomiting, wasting, appetite loss, cramping, seizures, muscle spasms, or spasticity, when these symptoms are unrelieved by standard treatments or medications; or

(g) Any other medical condition duly approved by the Washington state medical quality assurance ((~~board [commission]~~)) commission in

consultation with the board of osteopathic medicine and surgery as directed in this chapter.

(5) "Valid documentation" means:

(a) A statement signed by a qualifying patient's physician, or a copy of the qualifying patient's pertinent medical records, which states that, in the physician's professional opinion, the ((~~potential benefits of the medical use of marijuana would likely outweigh the health risks for a particular qualifying~~)) patient may benefit from the medical use of marijuana; ((~~and~~))

(b) Proof of identity such as a Washington state driver's license or identicard, as defined in RCW 46.20.035; and

(c) A copy of the physician statement described in (a) of this subsection shall have the same force and effect as the signed original.

Sec. 4. RCW 69.51A.030 and 1999 c 2 s 4 are each amended to read as follows:

A physician licensed under chapter 18.71 or 18.57 RCW shall be excepted from the state's criminal laws and shall not be penalized in any manner, or denied any right or privilege, for:

(1) Advising a qualifying patient about the risks and benefits of medical use of marijuana or that the qualifying patient may benefit from the medical use of marijuana where such use is within a professional standard of care or in the individual physician's medical judgment; or

(2) Providing a qualifying patient with valid documentation, based upon the physician's assessment of the qualifying patient's medical history and current medical condition, that the ((~~potential benefits of the~~)) medical use of marijuana ((~~would likely outweigh the health risks for the~~)) may benefit a particular qualifying patient.

Sec. 5. RCW 69.51A.040 and 1999 c 2 s 5 are each amended to read as follows:

(1) If a law enforcement officer determines that marijuana is being possessed lawfully under the medical marijuana law, the officer may document the amount of marijuana, take a representative sample that is large enough to test, but not seize the marijuana. A law enforcement officer or agency shall not be held civilly liable for failure to seize marijuana in this circumstance.

(2) If charged with a violation of state law relating to marijuana, any qualifying patient who is engaged in the medical use of marijuana, or any designated ((~~primary caregiver~~)) provider who assists a qualifying patient in the medical use of marijuana, will be deemed to have established an affirmative defense to such charges by proof of his or her compliance with the requirements provided in this chapter. Any person meeting the requirements appropriate to his or her status under this chapter shall be considered to have engaged in activities permitted by this chapter and shall not be penalized in any manner, or denied any right or privilege, for such actions.

((~~(3) The~~)) (3) A qualifying patient, if eighteen years of age or older, or a designated provider shall:

(a) Meet all criteria for status as a qualifying patient or designated provider;

(b) Possess no more marijuana than is necessary for the patient's personal, medical use, not exceeding the amount necessary for a sixty-day supply; and

(c) Present his or her valid documentation to any law enforcement official who questions the patient or provider regarding his or her medical use of marijuana.

((~~(3) The~~)) (4) A qualifying patient, if under eighteen years of age at the time he or she is alleged to have committed the offense, shall ((~~comply~~)) demonstrate compliance with subsection ((~~(2)~~)) (3)(a) and (c) of this section. However, any possession under subsection ((~~(2)~~)) (3)(b) of this section, as well as any production, acquisition, and decision as to dosage and frequency of use, shall be the responsibility of the parent or legal guardian of the qualifying patient.

((~~(4) The designated primary caregiver shall:~~

~~(a) Meet all criteria for status as a primary caregiver to a qualifying patient;~~

~~(b) Possess, in combination with and as an agent for the qualifying patient, no more marijuana than is necessary for the patient's personal, medical use, not exceeding the amount necessary for a sixty-day supply;~~

~~(c) Present a copy of the qualifying patient's valid documentation required by this chapter, as well as evidence of designation to act as~~

~~primary caregiver by the patient, to any law enforcement official requesting such information;~~

~~((d) Be prohibited from consuming marijuana obtained for the personal, medical use of the patient for whom the individual is acting as primary caregiver; and~~

~~(e) Be the primary caregiver to only one patient at any one time.~~))

Sec. 6. RCW 69.51A.060 and 1999 c 2 s 8 are each amended to read as follows:

(1) It shall be a misdemeanor to use or display medical marijuana in a manner or place which is open to the view of the general public.

(2) Nothing in this chapter requires any health insurance provider to be liable for any claim for reimbursement for the medical use of marijuana.

(3) Nothing in this chapter requires any physician to authorize the use of medical marijuana for a patient.

(4) Nothing in this chapter requires any accommodation of any on-site medical use of marijuana in any place of employment, in any school bus or on any school grounds, ((~~or~~)) in any youth center, in any correctional facility, or smoking medical marijuana in any public place as that term is defined in RCW 70.160.020.

(5) It is a class C felony to fraudulently produce any record purporting to be, or tamper with the content of any record for the purpose of having it accepted as, valid documentation under RCW 69.51A.010((~~(5)~~)) (6)(a).

(6) No person shall be entitled to claim the affirmative defense provided in RCW 69.51A.040 for engaging in the medical use of marijuana in a way that endangers the health or well-being of any person through the use of a motorized vehicle on a street, road, or highway.

Sec. 7. RCW 69.51A.070 and 1999 c 2 s 9 are each amended to read as follows:

The Washington state medical quality assurance ((~~board (commission)~~)) commission in consultation with the board of osteopathic medicine and surgery, or other appropriate agency as designated by the governor, shall accept for consideration petitions submitted ((~~by physicians or patients~~)) to add terminal or debilitating conditions to those included in this chapter. In considering such petitions, the

Washington state medical quality assurance ((~~board [commission]~~)) commission in consultation with the board of osteopathic medicine and surgery shall include public notice of, and an opportunity to comment in a public hearing upon, such petitions. The Washington state medical quality assurance ((~~board [commission]~~)) commission in consultation with the board of osteopathic medicine and surgery shall, after hearing, approve or deny such petitions within one hundred eighty days of submission. The approval or denial of such a petition shall be considered a final agency action, subject to judicial review.

NEW SECTION. Sec. 8. A new section is added to chapter 69.51A RCW to read as follows:

(1) By July 1, 2008, the department of health shall adopt rules defining the quantity of marijuana that could reasonably be presumed to be a sixty-day supply for qualifying patients; this presumption may be overcome with evidence of a qualifying patient's necessary medical use.

(2) As used in this chapter, "sixty-day supply" means that amount of marijuana that qualifying patients would reasonably be expected to need over a period of sixty days for their personal medical use. During the rule-making process, the department shall make a good faith effort to include all stakeholders identified in the rule-making analysis as being impacted by the rule.

(3) The department of health shall gather information from medical and scientific literature, consulting with experts and the public, and reviewing the best practices of other states regarding access to an adequate, safe, consistent, and secure source, including alternative distribution systems, of medical marijuana for qualifying patients. The department shall report its findings to the legislature by July 1, 2008.

Passed by the Senate April 20, 2007.
Passed by the House April 18, 2007.
Approved by the Governor May 8, 2007.
Filed in Office of Secretary of State May 10, 2007.